

**PUBLIC HEALTH CODE (EXCERPT)**  
**Act 368 of 1978**

PART 137

**333.13701 Meanings of words and phrases.**

Sec. 13701. As used in this part, the words and phrases defined in sections 13702 to 13704 have the meanings ascribed to them in those sections.

**History:** Add. 1987, Act 203, Imd. Eff. Dec. 22, 1987.

**Compiler's note:** For transfer of powers and duties of radioactive materials program from department of health and human services to department of health and human services, see E.R.O. No. 2017-3, compiled at MCL 333.26254.

**Popular name:** Act 368

**333.13702 Definitions; A to H.**

Sec. 13702. (1) "Above ground vault" means an engineered structure with a floor, walls, and a roof constructed at least partially above grade that is designed in a manner that is compatible with the requirements of this part and the rules promulgated under this part.

(2) "Above or below ground canisters" are individual, engineered modular containers that contain 1 or more waste packages that are approved by the department, in compliance with applicable federal law, and designed in a manner that meets all of the requirements of this part and the rules promulgated under this part.

(3) "Authority" means the low-level radioactive waste authority created in the low-level radioactive waste authority act, Act No. 204 of the Public Acts of 1987, being sections 333.26201 to 333.26226 of the Michigan Compiled Laws.

(4) "Below ground vault" means an engineered structure with a floor, walls, and a roof constructed entirely below grade that is designed in a manner that is compatible with the requirements of this part and the rules promulgated under this part.

(5) "Candidate site" means a site designated by the authority as a possible host site.

(6) "Carrier" means a person authorized pursuant to this part who is engaged in the transportation of waste by air, rail, highway, or water.

(7) "Collector" means a person authorized pursuant to this part who receives prepackaged waste from a generator and who does not treat or repackage that waste.

(8) "Compact" means a contractual, cooperative agreement among 2 or more states to provide for the disposal of low-level radioactive waste, that is reflected in the passage of statutes by the participating states.

(9) "Disposal" means the isolation of waste from the biosphere by emplacement in the disposal site or as otherwise authorized in section 13709(3).

(10) "Disposal site" means a geographic location in this state upon which the disposal unit and any other structures and appurtenances are located, the property upon which any monitoring equipment is located, and the isolation distance from the disposal unit to adjacent property lines.

(11) "Disposal unit" means the portion of the disposal site into which waste is placed for disposal.

(12) "Host site" means the candidate site that is designated by the commissioner as the location for the disposal site in this state.

**History:** Add. 1987, Act 203, Imd. Eff. Dec. 22, 1987;—Am. 1994, Act 435, Imd. Eff. Jan. 6, 1995.

**Compiler's note:** For transfer of powers and duties of the division of radiological health, with the exception of the radiation machine licensing and registration program, from the director of the department public health to the director of the department of environmental quality, see E.R.O. No. 1996-1, compiled at MCL 330.3101 of the Michigan Compiled Laws.

For transfer of powers and duties of radioactive materials program from department of health and human services to department of health and human services, see E.R.O. No. 2017-3, compiled at MCL 333.26254.

**Popular name:** Act 368

**333.13703 Definitions; G to M.**

Sec. 13703. (1) "Generator" means any person licensed as a generator by the nuclear regulatory commission and authorized pursuant to this part whose act or process results in the production of waste or whose act first causes waste to become subject to regulation under this part or federal law.

(2) "Groundwater" means water below the land surface in a zone of saturation.

(3) "Hazardous waste" has the meaning attributed to it in part 111 (hazardous waste management) of the natural resources and environmental protection act, Act No. 451 of the Public Acts of 1994, being sections 324.11101 to 324.11152 of the Michigan Compiled Laws.

(4) "Host site" means the candidate site that is designated by the authority as the location for the disposal site in this state.

(5) "Host site community" means the municipality that is designated by the authority as the host site.

(6) "Institutional control" means the continued surveillance, monitoring, and care of the disposal site after site closure and stabilization to insure the protection of the public health, safety, and welfare, and the environment until the contents of the disposal site no longer have a radioactive content that is greater than the natural background radiation of the host site as determined during its site characterization.

(7) "Local monitoring committee" means a committee established pursuant to the low-level radioactive waste authority act to provide for the participation of the residents of a candidate site community.

(8) "Low-level radioactive waste" or "waste" means radioactive material that consists of or contains class A, B, or C radioactive waste as defined by 10 C.F.R. 61.55, as in effect on January 26, 1983 but does not include waste or material that is any of the following:

(a) Owned or generated by the department of energy.

(b) Generated by or resulting from the operation or closure of a superconducting super collider.

(c) Owned or generated by the United States navy as a result of the decommissioning of vessels of the United States navy.

(d) Owned or generated as a result of any research, development, testing, or production of an atomic weapon.

(e) Identified under the formerly utilized sites remedial action program.

(f) High-level radioactive waste, spent nuclear fuel, or byproduct material as defined in section 11(e)(2) of the atomic energy act of 1954, chapter 1073, 68 Stat. 922, 42 U.S.C.2014.

(g) Contains greater than or equal to 100 nanocuries per gram of transuranic elements.

(h) Contains concentrations of radionuclides that exceed the limits established by the nuclear regulatory commission for class C radioactive waste as defined by 10 C.F.R. 61.55, as in effect on January 26, 1983.

(i) Classified as naturally occurring or accelerator-produced radioactive materials known as N.A.R.M. waste.

(j) Waste that after the effective date of this part is determined by the nuclear regulatory commission to be waste that is beneath regulatory concern, or B.R.C. waste as defined by the nuclear regulatory commission, unless the department and the authority concur with this designation.

(9) "Low-level radioactive waste management fund" or "fund" means the fund created in section 20 of the low-level radioactive waste authority act, Act No. 204 of the Public Acts of 1987, being section 333.26220 of the Michigan Compiled Laws.

(10) "Management" means the collection, storage, packaging, processing, transportation, or disposal, where applicable, of low-level radioactive waste.

(11) "Manifest" means a form provided or approved by the department that is used for identifying the quantity; composition, including the class, curie count, and radioactive nuclides; origin; routing; and destination of waste from the point of generation to the point of processing, collection, or disposal.

**History:** Add. 1987, Act 203, Imd. Eff. Dec. 22, 1987;—Am. 1996, Act 67, Imd. Eff. Feb. 26, 1996.

**Compiler's note:** For transfer of powers and duties of radioactive materials program from department of health and human services to department of health and human services, see E.R.O. No. 2017-3, compiled at MCL 333.26254.

**Popular name:** Act 368

### **333.13704 Definitions; M to S.**

Sec. 13704. (1) "Municipality" means a city, village, township, or Indian tribe.

(2) "Operation" means the control, supervision, or implementation of the actual physical activities involved in the acceptance, storage, disposal, and monitoring of waste at the disposal site, the maintenance of the disposal site, and any other responsibility pertaining to the disposal unit and the disposal site.

(3) "Performance assessment" means an analysis of the potential pathways for release of waste to the environment and the potential impacts of a release during the transportation of radioactive waste to the disposal site and during the handling and disposal of waste at the disposal site, including, but not limited to:

(a) A description of the potential pathways for radioactive nuclide migration beyond the boundaries of the disposal site during the operation of the site and in the event there is a release.

(b) A description of the potential pathways for radioactive nuclide migration beyond the packaging boundaries in the event of a release that occurs during transportation.

(c) An analysis of safety factors pertaining to the transportation of waste.

(d) The identification of the potential impacts to air, surface water, and groundwater quality, and vegetation, animals, and humans, or any other living thing beyond the boundaries of the disposal site.

(e) A description of potential mechanisms for radioactive release, including, but not limited to, mechanical failure, structural failure, and human error.

(4) "Person" means a person as defined in section 1106, and, for the purposes of this part, includes the

authority, a municipality, county, the state, and any subdivision of the state.

(5) "Postclosure observation and maintenance" means the surveillance, monitoring, and maintenance of the disposal site after it has been closed and continuing through site closure and stabilization and institutional control.

(6) "Processing" means any method, technique, or process, including storage to facilitate radioactive decay, designed to change the physical, chemical, radioactive concentration, or biological characteristics or composition of the waste, in order to render the waste safer for transport, storage, or disposal, amenable to recovery, convertible to another usable material, or to reduce the volume of waste. Processing does not include incineration or dilution of a material that has a radioactive concentration that is greater than the radioactive concentration of low-level radioactive waste.

(7) "Processor" means a person authorized pursuant to this part who processes or repackages waste.

(8) "Release" means any intentional or unintentional spilling, leaking, pumping, emitting, emptying, discharging, injecting, escaping, leaching, dumping, disposing, or placing of waste into the environment, except in compliance with all of the following:

(a) This part.

(b) The rules promulgated under part 135.

(c) Any rules promulgated under this part.

(d) Federal law.

(e) A permit or license issued pursuant to federal law, if the person who is responsible for the release holds such a permit or license.

(f) A permit or license issued pursuant to this part, if the person who is responsible for the release holds such a permit or license.

(9) "Remedial actions" means those actions taken in the event of a radioactive release or threatened release into the environment to prevent or minimize the radioactive release so that it does not migrate and cause significant danger to the present or future public health, safety, or welfare, or to the environment. Remedial action includes, but is not limited to, actions at the location of the release such as storage, confinement, perimeter protection which may include dikes, trenches, and ditches, clay cover, neutralization, dredging or excavation, repair or replacement of leaking containers, collection of leachate and runoff, efforts to minimize the social and economic harm of processing, provision of alternative water supplies, and any required monitoring to assure that the actions taken are sufficient to protect the public health, safety, and welfare, and the environment.

(10) "Shallow land burial" means the disposal of waste in an excavated trench constructed entirely below grade without a below-ground vault and without below-ground canisters.

(11) "Site characterization" means the site specific investigation of a candidate site undertaken pursuant to section 12 of the low-level radioactive waste authority act.

(12) "Site closure and stabilization" means the actions taken at the disposal site during the time period after the closure of the disposal unit during which on-site low-level radioactive waste is disposed in accordance with this part, equipment is dismantled, decontaminated, removed for reuse or disposed of, and radioactive residues are removed from, or properly isolated on, the disposal site.

(13) "Storage" means the temporary holding of low-level radioactive waste prior to processing or disposal.

**History:** Add. 1987, Act 203, Imd. Eff. Dec. 22, 1987.

**Compiler's note:** For transfer of powers and duties of radioactive materials program from department of health and human services to department of health and human services, see E.R.O. No. 2017-3, compiled at MCL 333.26254.

**Popular name:** Act 368

**Administrative rules:** R 325.5001 et seq., R 325.5801 et seq., and R 325.5901 et seq. of the Michigan Administrative Code.

### **333.13705 Regulatory responsibility.**

Sec. 13705. Subject to any limitations in this part, the department shall have the regulatory responsibility that is held by this state in all matters related to the generating, storage, processing, handling, transporting, possession, or disposal of waste.

**History:** Add. 1987, Act 203, Imd. Eff. Dec. 22, 1987.

**Compiler's note:** For transfer of powers and duties of radioactive materials program from department of health and human services to department of health and human services, see E.R.O. No. 2017-3, compiled at MCL 333.26254.

**Popular name:** Act 368

### **333.13706 Implementation and enforcement of part; coordination of regulatory activities; consultation, cooperation, and assistance.**

Sec. 13706. (1) The department shall implement and enforce this part, and shall coordinate all regulatory

activities of state agencies and departments acting within the scope of their responsibilities related to waste.

(2) The departments of agriculture, management and budget, commerce, natural resources, state police, the state transportation department, and other state departments and agencies shall consult and cooperate with the department and shall assist the department in the implementation of this part.

**History:** Add. 1987, Act 203, Imd. Eff. Dec. 22, 1987.

**Compiler's note:** For transfer of powers and duties of radioactive materials program from department of health and human services to department of health and human services, see E.R.O. No. 2017-3, compiled at MCL 333.26254.

**Popular name:** Act 368

### **333.13707 Review and recommendations; conflicting laws and rules.**

Sec. 13707. (1) The department shall enter into negotiations with the federal government on behalf of this state for full agreements providing for the discontinuance of specified federal authority with regard to waste disposal, radioactive by-product, source and special nuclear material, or for other authority over radioactive materials or sources of ionizing radiation in this state and assumption of that authority by this state. The governor with the advice and consent of the senate may enter into 1 or more agreements with the federal government negotiated pursuant to this subsection.

(2) The department and the attorney general shall review this part and all applicable federal and state laws and rules pertaining to the authority, the disposal site, and to generators, carriers, collectors, and processors and shall submit written recommendations to the legislature and the governor regarding whether this state should require additional or more stringent regulations for generators, carriers, collectors, or processors to protect the public health, safety, and welfare, and the environment. In addition, the department and the attorney general shall submit written recommendations and the rationale supporting the recommendations to the legislature regarding whether this state should include naturally occurring or accelerator produced radioactive materials known as N.A.R.M. waste in the definition of waste that may be disposed of in the disposal site. The recommendation required in this subsection shall be submitted by April 1, 1988.

(3) If a portion of this part or a rule that is promulgated under this part conflicts with part 135 or with a rule that is promulgated under part 135 prior to the effective date of this part, this part and any rules promulgated under this part shall be given precedence unless a contrary legislative intent is evident.

**History:** Add. 1987, Act 203, Imd. Eff. Dec. 22, 1987.

**Compiler's note:** For transfer of powers and duties of radioactive materials program from department of health and human services to department of health and human services, see E.R.O. No. 2017-3, compiled at MCL 333.26254.

**Popular name:** Act 368

**Administrative rules:** R 325.5001 et seq., R 325.5801 et seq., and R 325.5901 et seq. of the Michigan Administrative Code.

### **333.13708 Duties of director or director's designee.**

Sec. 13708. The director or the director's designee, with the assistance of other state departments and agencies, shall do all of the following:

(a) Implement a regulatory, inspection, and enforcement program to carry out the provisions of this part.

(b) Issue a construction and operating license to the authority upon the submittal by the authority of an application for a license for the construction and operation of the disposal unit on the disposal site that is in compliance with the requirements of this part and with rules promulgated under this part.

(c) Issue permits to generators, carriers, collectors, and processors if all the requirements of this part and rules promulgated under this part are met.

(d) Assure that the authority fulfills its responsibilities under this act and under the low-level radioactive waste authority act.

(e) Promulgate rules and take any other action considered necessary by the department as authorized under the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws. In fulfilling the requirement to promulgate rules, the director shall promulgate rules necessary to implement the provisions of this part that pertain to the issuance of permits to generators, transporters, collectors, and processors, including rules pertaining to the possession of waste by a generator, transporter, collector, or processor that is incidental to the regulated activity of the permit holder.

(f) Contract as necessary for research and services to assist in the implementation of the department's powers and duties under this part.

(g) Insure the permanent maintenance of records that are sufficient to assure a complete accounting of all waste that is generated, transported, processed, collected, and disposed of in this state, and which includes the maintenance of records pertaining to the operation of the disposal site, the site, site closure and stabilization, and institutional control.

(h) Review the monthly report submitted by the authority to the department as required in section 18 of the

low-level radioactive waste authority act.

(i) Take responsive action regarding any discrepancy or other matter considered necessary by the department after reviewing the monthly report described in subdivision (h).

(j) Biannually audit all of the records pertaining to manifests that are maintained by the authority.

(k) Develop and implement policies and programs to insure adequate and informed public participation in matters pertaining to the regulation of the disposal site.

(l) Review and comment on the site selection process developed by the authority pursuant to the low-level radioactive waste authority act.

(m) Review and approve or disapprove the weekly construction inspection submitted by the authority during the construction of the disposal site.

(n) Review for completeness only the contracts entered into by the authority pursuant to the low-level radioactive waste authority act.

(o) Review the authority's recommendation regarding sanctions against a generator, carrier, collector, or processor who the authority suspects has violated this part, rules promulgated under this part, or a permit issued under this part and respond by taking appropriate regulatory action.

(p) Assure that the authority charges just and reasonable fees and surcharges for the disposal of waste and obtains sufficient funds to cover expenses incurred under this part and as required in the low-level radioactive waste authority act.

(q) Seek appropriations from the general fund and from the low-level radioactive waste management fund from the legislature in amounts that are sufficient to fulfill the department's responsibilities under this part.

(r) Approve or disapprove a waiver by the authority of 1 or more of the criteria for the selection of 3 candidate sites provided for in section 11(4) of the low-level radioactive waste authority act. If the director approves the waiver, the approval shall indicate why the director concludes that the waiver will not compromise the public health, safety, or welfare, or the environment and that a candidate site for which a waiver is sought is an appropriate candidate site despite the site's inability to meet 1 or more of the criteria in section 11(3) of the low-level radioactive waste authority act. Prior to approving a waiver under this subdivision, the director shall forward the proposed approval and supporting documentation to the department of natural resources for review and written comments.

**History:** Add. 1987, Act 203, Imd. Eff. Dec. 22, 1987;—Am. 1994, Act 435, Imd. Eff. Jan. 6, 1995.

**Compiler's note:** For transfer of powers and duties of radioactive materials program from department of health and human services to department of health and human services, see E.R.O. No. 2017-3, compiled at MCL 333.26254.

**Popular name:** Act 368

### **333.13709 Compliance; disposal of waste; full agreement state status; waiver; acceptance of waste for disposal.**

Sec. 13709. (1) A person shall not possess, generate, collect, process, package, store, transport, or dispose of waste in this state without complying with the requirements of this part.

(2) Except as otherwise provided in subsection (3), if this state has not obtained full agreement state status with the federal government, a person shall not dispose of waste in this state except in the disposal site licensed by the United States nuclear regulatory commission, or its successor agency, and by the director through the issuance of a construction and operating license under this part. Except as otherwise provided in subsection (3), if this state has full agreement state status, a person shall not dispose of waste in this state except at the disposal site licensed by the director through the issuance of a construction and operating license under this part.

(3) Prior to the issuance of a construction and operating license under this part, if a person obtains a waiver pursuant to 10 C.F.R. 20.302, the requirement that waste be disposed of only in the disposal site shall be waived by the director upon receipt of notice and evidence of such a waiver. Following the issuance of a construction and operating license under this part, the director with the written concurrence of the authority may grant or deny an application for a waiver of the requirement that waste be disposed of only in the disposal site if either of the following occurs:

(a) If this state has obtained full agreement state status with the federal government, the department approves the disposal of the waste in a location other than the disposal site and concludes that the waiver will not harm the public health, safety, or welfare, or the environment and will not substantially impact on the volume of waste available for disposal in the disposal site or the financial solvency of the disposal site.

(b) If this state has not obtained a full agreement state status with the federal government, the department concludes that any waiver granted by the nuclear regulatory commission will not harm the public health, safety, or welfare, or the environment and will not substantially impact on the volume of waste available for disposal in the disposal site or the financial solvency of the disposal site.

(4) The department shall assure that waste that is not generated in this state or in a state with which this state may elect to enter a compact shall not be accepted for disposal at the disposal site. In addition, if this state is a member of a compact the department shall assure that this state does not accept waste for disposal from any member of the compact that does either of the following:

(a) Is delinquent in paying dues or fees payable under the compact.

(b) Fails to establish or maintain a permitting and regulatory system, including penalties and remedies, that equals or exceeds the laws and rules of this state as they apply to generators, carriers, processors, and collectors.

(5) If this state is not a member of a compact, the department shall assure that the disposal site accepts only waste generated in this state.

**History:** Add. 1987, Act 203, Imd. Eff. Dec. 22, 1987;—Am. 1994, Act 435, Imd. Eff. Jan. 6, 1995.

**Compiler's note:** For transfer of powers and duties of radioactive materials program from department of health and human services to department of health and human services, see E.R.O. No. 2017-3, compiled at MCL 333.26254.

**Popular name:** Act 368

### **333.13710 Minimum criteria for design, construction, and operation of disposal site.**

Sec. 13710. (1) The director, following consultation with the department of natural resources, shall establish minimum criteria for the design, construction, and operation of the disposal site. The minimum criteria shall reflect and shall be updated to include state-of-the-art technology in regard to disposal site design, construction, operation, and waste disposal technology. The criteria shall be developed and prepared in the form of specifications to be included in the construction and operating license issued to the authority pursuant to sections 13712 to 13714 and in any modification of that license. The criteria at a minimum shall comply with criteria adopted under the atomic energy act of 1954, 42 U.S.C. 2011 to 2296 and regulations pertaining to licensing requirements for land disposal of waste under 10 C.F.R. 61.1 to 61.81 and shall require that the isolation distance between the disposal unit and adjacent property lines be at least 3,000 feet.

(2) Shallow land burial shall not be permitted. Acceptable disposal technologies shall be limited to above and below ground canisters or above and below ground vaults, or both. The criteria shall also include provisions for monitoring at the disposal site and within the disposal unit and provisions for the recoverability of waste that has been disposed of in the disposal site.

**History:** Add. 1987, Act 203, Imd. Eff. Dec. 22, 1987;—Am. 1994, Act 435, Imd. Eff. Jan. 6, 1995.

**Compiler's note:** For transfer of powers and duties of radioactive materials program from department of health and human services to department of health and human services, see E.R.O. No. 2017-3, compiled at MCL 333.26254.

**Popular name:** Act 368

### **333.13711 Licensing requirements for design, construction, and operation of disposal site.**

Sec. 13711. The licensing requirements for the design, construction, and operation of the disposal site shall be at least as stringent as all applicable federal design, construction, and operating requirements. The director, following consultation with the department of natural resources, shall establish requirements for the design, construction, and operation of the disposal site that reflect those practices that are necessary to protect the public health, safety, and welfare, and the environment, and that include at least all of the following:

(a) Requirements and performance standards for the operation of the disposal site.

(b) Requirements and standards for the keeping of records and the reporting and retaining of data collected by the authority.

(c) Requirements, training, and standards for the personnel who operate, monitor, and maintain the disposal site.

(d) Requirements and standards for the emergency closure of the disposal site.

(e) Requirements and standards for the postclosure observation and maintenance, and postclosure ownership, monitoring, maintenance, and use, if any, of the disposal site.

(f) Specifications regarding the amounts, sources, form, chemical, and physical composition, and concentrations of the waste that may be accepted at the disposal site.

**History:** Add. 1987, Act 203, Imd. Eff. Dec. 22, 1987.

**Compiler's note:** For transfer of powers and duties of radioactive materials program from department of health and human services to department of health and human services, see E.R.O. No. 2017-3, compiled at MCL 333.26254.

**Popular name:** Act 368

### **333.13712 Construction and operating license; application; additional information; fee; license nontransferable.**

Sec. 13712. (1) The disposal site shall not be constructed or operated in this state except upon issuance of a

construction and operating license issued under this part by the director. The director shall consider only an application submitted by the authority for a construction and operating license. However, the authority may submit a license that has been prepared for the authority pursuant to a contract entered into by the authority as provided in the low-level radioactive waste authority act.

(2) An application for a construction and operating license shall contain all of the following information pertaining to the disposal site:

- (a) The mailing address of the authority.
- (b) The location of the host site.
- (c) A hydrogeological report specifying the existing hydrogeological characteristics.
- (d) A monitoring program acceptable to the department and consistent with all applicable federal and state laws and rules pertaining to the protection of the public health, safety, and welfare, and the environment.
- (e) A performance assessment.
- (f) Engineering plans and specifications for construction.
- (g) A detailed basis for design specifications.
- (h) The disposal technology.
- (i) Procedures for the pre-closure monitoring.
- (j) Operating procedures.
- (k) A site closure and stabilization plan.
- (l) A postclosure observation and maintenance plan and an institutional control plan, both of which shall contain specific provisions as to who is responsible for all aspects of monitoring, maintenance, and other procedures necessary to protect the public health, safety, and welfare, and the environment for as long as the waste is in the disposal site.
- (m) Estimates of the quantities and types of wastes to be stored, treated, or disposed of at the disposal site.
- (n) The personnel information necessary to assure the integrity and qualifications of the personnel hired by the authority.
- (o) A contingency plan to establish the procedures to be followed in the event of a release.

(3) If any information required to be included in the application regarding a person undertaking a responsibility of the authority changes, or is supplemented after the filing of the statement, the person undertaking a responsibility of the authority shall provide that information to the department in writing, within 30 days of the change or addition.

(4) An application for a construction and operating license shall be accompanied by a nonrefundable application fee that is determined by the department to be sufficient to cover the costs of processing the application.

(5) A construction and operating license shall not be transferable from the office of the authority.

**History:** Add. 1987, Act 203, Imd. Eff. Dec. 22, 1987.

**Compiler's note:** For transfer of powers and duties of radioactive materials program from department of health and human services to department of health and human services, see E.R.O. No. 2017-3, compiled at MCL 333.26254.

**Popular name:** Act 368

### **333.13713 Application for construction and operating license; additional information; nullification of contract; supplementing and keeping current information.**

Sec. 13713. (1) The application for a construction and operating license shall contain such additional information as may be required by the department, and shall disclose all of the following information regarding persons with whom the authority enters into agreements or contracts to prepare a construction and operating license for the disposal site or for the construction or operation of the disposal site, if known:

- (a) The full name and business address of all of the following:
  - (i) Each person who enters into a contract to undertake a responsibility of the authority.
  - (ii) The 5 persons holding the largest shares of the equity in or debt liability of the person undertaking a responsibility of the authority. The director may waive all or any portion of this requirement for a person who is a corporation with publicly traded stock.
  - (iii) If known, the 3 employees of the person who contracts with the authority who will have the most responsibility for the day-to-day operation of the site.
  - (iv) Any other business entity listed in which any person listed in subdivisions (i) to (iii) has at any time had 25% or more of the equity in or debt liability of that business entity.
- (b) A listing of all convictions for criminal violations of an environmental statute promulgated by a federal, state, Canadian, or provincial agency for each person required to be listed under this subsection. If debt liability is held by a chartered lending institution, information required in this subsection shall not be required from that institution.

(c) A listing of all civil judgments resulting from a violation of an environmental statute promulgated by a federal, state, Canadian, or provincial agency for each person required to be listed under this subsection. If debt liability is held by a chartered lending institution, information required in this subsection shall not be required from that institution.

(d) A listing of all environmental permits or licenses issued by a federal, state, Canadian, or provincial agency held by each person required to be listed under this subsection and a listing of any of those permits or licenses that were permanently revoked because of noncompliance.

(e) A listing of all activities at property owned or operated by each person required to be listed under this subsection, if the incident resulted in a threat or potential threat to the environment.

(2) Notwithstanding any other provision of law, the director may nullify a contract between the authority and a person who undertakes or may undertake a responsibility of the authority if there are any listings as originally disclosed or as supplemented pursuant to subsection (1)(b), (c), or (e) or subsection (1)(d) as it pertains to permits or licenses that were permanently revoked because of noncompliance.

(3) The authority shall have the continuous responsibility to supplement and keep current the information required in subsection (1). The authority shall provide the department with the information required in subsection (1) for persons with whom the authority enters into contracts following the original submittal of an application for a construction and operating license.

**History:** Add. 1987, Act 203, Imd. Eff. Dec. 22, 1987.

**Compiler's note:** For transfer of powers and duties of radioactive materials program from department of health and human services to department of health and human services, see E.R.O. No. 2017-3, compiled at MCL 333.26254.

**Popular name:** Act 368

### **333.13714 Surety bond, secured trust fund, or other suitable secured instrument or mechanism.**

Sec. 13714. The authority shall file as a part of the application for a construction and operating license a surety bond, secured trust fund, or other suitable secured instrument or mechanism that shall be approved by the department and shall cover the cost of site closure and stabilization. In addition, the authority shall file a surety bond, secured trust fund, or other suitable secured instrument or mechanism that shall be approved by the department, and shall cover the cost of the postclosure observation and maintenance of the disposal site and institutional control. The authority may use a combination of bonds, instruments, mechanisms, or funds, as approved by the department, to satisfy the requirements of this section. The bond, instrument, mechanism, or fund, or combination of these methods of assurance, shall be in an amount equal to a reasonable estimate of the site closure and stabilization costs, based on the level of operations proposed in the application for the construction and operating license, and for institutional control. The bond, instrument, mechanism, or fund, or the combination of these methods of assurance, shall be adjusted periodically as determined by the department to account for inflation or changes in the permitted level of operation of the disposal site. A failure to maintain the bond, instrument, mechanism, or fund, or combination of these methods of assurance, constitutes a violation of this part.

**History:** Add. 1987, Act 203, Imd. Eff. Dec. 22, 1987.

**Compiler's note:** For transfer of powers and duties of radioactive materials program from department of health and human services to department of health and human services, see E.R.O. No. 2017-3, compiled at MCL 333.26254.

**Popular name:** Act 368

### **333.13715 Financial responsibility.**

Sec. 13715. The authority, as part of the application for a construction and operating license, shall demonstrate financial responsibility through the establishment of a fully funded trust fund or a liability bond, or both, providing for bodily injury and property damage to third parties caused by sudden and accidental releases arising from operations of the disposal site. The authority shall obtain and maintain liability coverage for sudden and accidental releases in an amount of not less than \$3,000,000.00 per occurrence with an annual aggregate of not less than \$6,000,000.00, and additional coverage sufficient to meet anticipated legal defense costs.

**History:** Add. 1987, Act 203, Imd. Eff. Dec. 22, 1987.

**Compiler's note:** For transfer of powers and duties of radioactive materials program from department of health and human services to department of health and human services, see E.R.O. No. 2017-3, compiled at MCL 333.26254.

**Popular name:** Act 368

### **333.13716 Duties of department; issuance or denial of license; consultation; cooperation; assistance; exemption; effect of local requirements.**



Sec. 13716. (1) Upon receipt of an application for a construction and operating license, the department shall do all of the following:

(a) Within 45 days, determine whether the application is complete. If the application is not complete, the department shall notify the authority of all deficiencies and request that the additional information that the department considers necessary to make the application complete be supplied by the authority within 15 days. If the authority is unable to supply the requested information within 15 days, the authority shall notify the department in writing of the reason for any delay and when the requested information will be forwarded.

(b) Immediately notify the local monitoring committee of the host site community, the governing body of the county in which the host site is located, and impacted state departments and agencies as determined by the department of the receipt of an application for a construction and operating license and the procedure by which the license may be approved or denied.

(c) Publish a notice in a newspaper that has statewide circulation, and a newspaper that has major circulation in the municipality in the immediate vicinity of the host site, and a newspaper that is circulated in the county in which the host site is located. The published notice shall contain a map indicating the location of the host site and shall contain a description of the host site and the location where the complete application package may be reviewed and where copies may be obtained. The notice shall describe the procedure by which the construction and operating license may be granted or denied. The director shall provide an opportunity for public comment at least 60 days before making a final decision to grant or deny an application for a construction and operating license.

(d) Along with other impacted state departments and agencies as determined by the department, review the entire application for a construction and operating license. The review shall include, but not be limited to, considerations pertaining to air quality, water quality, waste management, hydrogeology, and proposed waste transportation routes, and the protection of the public health, safety, and welfare, and the environment. The review shall be completed within 140 days after a complete application is received. Following the completion of the 140-day review, the department shall prepare a draft version of a construction and operating license that the department is considering issuing. Before the department prepares a draft construction and operating license, the department shall assure that all concerns expressed by the review board created in section 13 of the low-level radioactive waste authority act, the local monitoring committee of the host site community, the governing body of the county in which the host site is located, and impacted state departments and agencies during the review process are considered. A written and signed review by each person representing a department who reviews the application and plans shall be reviewed and recorded by the department before a draft license is prepared by the department. In addition, before a draft license is prepared, but following the completion of the 140-day review, the department shall prepare a responsive summary that describes any public comments received by the department and describes how those comments have been evaluated and addressed by the department.

(e) Insure that the draft construction and operating license, written and signed reviews, and the responsive summary provided for in subdivision (d) are submitted to impacted state agencies as determined by the director and to the department of environmental quality.

(2) The director shall make a decision to issue a construction and operating license or deny the application for a construction and operating license as soon as practicable but not later than 12 months after the receipt of a complete application that is in compliance with this part. If the director denies the authority's application for a construction and operating license, the director shall state his or her reason or reasons in writing. If the construction and operating license application meets the requirements of this part and the rules promulgated under this part, the department shall, after preparing a draft version, prepare and issue to the authority a construction and operating license.

(3) The departments of agriculture, natural resources, environmental quality, state police, the state transportation department, and other state departments and agencies shall consult and cooperate with the department in a timely manner in the review of an application for a construction and operating license. The department may also seek the assistance of any other person in evaluating the application for a construction and operating license and in the development of a draft or final construction and operating license, or both.

(4) Except as provided in this subsection, the issuance of a construction and operating license by the director pursuant to this part shall exempt the authority from obtaining other permits, licenses, or registrations which may be required under other applicable state laws, but shall not exempt the authority from meeting other standards and requirements of applicable state laws or federal laws or from obtaining an operating license pursuant to part 111 (hazardous waste management) of the natural resources and environmental protection act, Act No. 451 of the Public Acts of 1994, being sections 324.11101 to 324.11152 of the Michigan Compiled Laws, before construction commences.

(5) A local ordinance or permit requirement or other local requirement shall not prohibit, restrict, or

regulate the construction or operation of the disposal site.

**History:** Add. 1987, Act 203, Imd. Eff. Dec. 22, 1987;—Am. 1996, Act 67, Imd. Eff. Feb. 26, 1996.

**Compiler's note:** For transfer of powers and duties of radioactive materials program from department of health and human services to department of health and human services, see E.R.O. No. 2017-3, compiled at MCL 333.26254.

**Popular name:** Act 368

### **333.13717 Independent contractor; inspecting and verifying construction of disposal site; qualification of contractor; certification; compliance; filing and availability of inspection results; addressing deficiencies.**

Sec. 13717. (1) Prior to the commencement of the construction of the disposal site, the department shall enter into a contract with an independent contractor who shall inspect and verify that the construction of the disposal site is progressing according to this part, rules promulgated under this part, and the conditions and stipulations included in the construction and operating license. The contractor hired under this subsection shall be knowledgeable in construction projects of the scope and complexity of the disposal site and shall not be associated in any business capacity with a contractor hired by the authority to construct the disposal site. A representative of the local monitoring committee for the host site community may be present during an inspection of the disposal site by the independent contractor.

(2) Prior to the commencement of the operation of the disposal site, the authority shall submit to the director a certification under the seal of a registered professional engineer who contracted with the authority verifying that the construction of the disposal site has proceeded according to the plans approved by the department and the construction and operating license. The department may require additional certification periodically during the operation of the disposal site.

(3) Following the construction of the disposal site and receipt of the certification required under subsection (2), the department and the independent contractor hired pursuant to subsection (1) shall inspect the disposal site and determine if the site complies with this part, rules promulgated under this part, and the conditions and stipulations included in the construction and operating license. The results of the inspection shall be filed in writing with the department before the operation of the disposal site is authorized, and shall be made available to the local monitoring committee of the host site community, the governing body of the county in which the host site is located, and to the public for review. The department shall assure that all deficiencies noted in the inspection shall be addressed to the satisfaction of the department prior to the commencement of the operation of the disposal site.

**History:** Add. 1987, Act 203, Imd. Eff. Dec. 22, 1987.

**Compiler's note:** For transfer of powers and duties of radioactive materials program from department of health and human services to department of health and human services, see E.R.O. No. 2017-3, compiled at MCL 333.26254.

**Popular name:** Act 368

### **333.13718 Temporary or permanent closure of disposal site; reopening.**

Sec. 13718. The director may issue an order temporarily or permanently closing the disposal site prior to its scheduled closing date if the director finds that there is a potential hazard to the public health, safety, or welfare or to the environment that justifies a temporary or permanent closure. A disposal site that is temporarily closed shall not receive waste and shall remain closed while remedial action is taken. Before authorizing the reopening of a temporarily closed disposal site, the department shall seek the advice of the local monitoring committee of the host site community and the department of natural resources, and shall provide a documented explanation of its reasons for authorizing the reopening.

**History:** Add. 1987, Act 203, Imd. Eff. Dec. 22, 1987.

**Compiler's note:** For transfer of powers and duties of radioactive materials program from department of health and human services to department of health and human services, see E.R.O. No. 2017-3, compiled at MCL 333.26254.

**Popular name:** Act 368

### **333.13719 Release of waste or hazardous waste; remedial action; site closure and stabilization; cost.**

Sec. 13719. (1) If there has been a release of waste or hazardous waste at the disposal site during its operation, closure, or postclosure, the department shall assure that the authority takes appropriate remedial action.

(2) If there is a release that requires the disposal site to be closed permanently, the department shall insure that site closure and stabilization is complete and adequate and that the authority retains control of the disposal site through the period of institutional control. The cost of site closure and stabilization shall be paid from the low-level radioactive waste management fund.

**History:** Add. 1987, Act 203, Imd. Eff. Dec. 22, 1987.

**Compiler's note:** For transfer of powers and duties of radioactive materials program from department of health and human services to department of health and human services, see E.R.O. No. 2017-3, compiled at MCL 333.26254.

**Popular name:** Act 368

### **333.13720 Site closure and stabilization; control; cost; rules; surveillance and maintenance of disposal site.**

Sec. 13720. (1) Beginning on January 1, 2014, or prior to that date if the disposal site has been permanently closed for any reason, the authority shall begin site closure and stabilization. The department shall assure that site closure and stabilization is complete and adequate and that the authority retains control of the disposal site. The cost of site closure and stabilization shall be borne by the authority.

(2) The department shall promulgate rules pertaining to site closure and stabilization and the active surveillance and maintenance of the disposal site.

(3) After completing site closure and stabilization, the authority shall be required by the department to assure that surveillance and maintenance of the disposal site occurs in accordance with the requirements and conditions of the construction and operating license and with any rules promulgated under this part. The department shall assure that the authority retain control of the site through the period of institutional control.

**History:** Add. 1987, Act 203, Imd. Eff. Dec. 22, 1987.

**Compiler's note:** For transfer of powers and duties of radioactive materials program from department of health and human services to department of health and human services, see E.R.O. No. 2017-3, compiled at MCL 333.26254.

**Popular name:** Act 368

### **333.13721 Amendment to construction and operating license.**

Sec. 13721. If the authority proposes an amendment to the construction and operating license for the disposal site to conform to the requirements of this part and the rules promulgated under this part, or if the director determines that amendments are necessary to conform to the requirements of this part or the rules promulgated under this part, the director may amend the construction and operating license issued to the authority as necessary to protect the public health, safety, and welfare, and the environment. However, prior to authorizing an amendment to a construction and operating license, the director shall submit a proposed amendment to the department of natural resources for review and comment. The director shall submit the department of natural resources' comments and the director's response to those comments to the review board created in the low-level radioactive waste authority act, and to the local monitoring committees. An amendment to a construction and operating license shall specify the time required to complete any required modifications. The director may prescribe a fee to be paid by the authority from revenues collected by the disposal site that is sufficient to cover the department's administrative costs associated with the processing and modification of the construction and operating license. A construction and operating license issued under this part is subject to amendment, as provided in the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

**History:** Add. 1987, Act 203, Imd. Eff. Dec. 22, 1987.

**Compiler's note:** For transfer of powers and duties of radioactive materials program from department of health and human services to department of health and human services, see E.R.O. No. 2017-3, compiled at MCL 333.26254.

**Popular name:** Act 368

### **333.13721a Disposal shipment registration system; validity and contents of approved disposal shipment certificate; application for certificate; duty of generator, processor, or collector; duty of carrier; approval or denial of application for certificate; amended certificate.**

Sec. 13721a. (1) The authority shall establish and implement a disposal shipment registration system which shall at a minimum require a valid disposal shipment certificate to accompany each shipment of waste to be delivered to the disposal site.

(2) An approved disposal shipment certificate shall be valid for not more than 3 days, and shall specify, at a minimum, all of the following:

(a) The date on which a designated shipment shall be delivered to the disposal site. The date shall be 1 of the 3 days for which the disposal certificate is valid.

(b) The hours during which a designated shipment shall be delivered to the disposal site.

(c) The name of the carrier, type of transport vehicle, type of shipping container or cask, type of disposal container, and applicable department of transportation hazard classifications.

(d) The transportation route that a carrier who is specified by the generator shall use to deliver a designated

shipment.

(e) The amount, type, class, and curie count of waste to be included in a designated shipment.

(3) A generator, processor, or collector who is arranging the transport of waste to the disposal site shall submit to the authority an application for a disposal shipment certificate for each shipment of waste to be delivered to the disposal site. The application shall be made on a form provided by or approved by the authority. The generator, processor, or collector shall submit the application at least 15 days, but not more than 30 days, prior to the date requested by the generator, processor, or collector for a carrier to transport the waste shipment to the disposal site.

(4) A generator, processor, or collector who is arranging the transport of waste to the disposal site shall ensure that a carrier who transports waste to the disposal site has been supplied with the information required in subsection (2).

(5) A carrier delivering a shipment of waste to the disposal site shall comply with the requirements of the disposal shipment certificate.

(6) The authority shall approve or deny within 10 days each complete application for a disposal shipment certificate that is submitted by a generator, processor, or collector who is arranging the transport of waste to the disposal site. An application shall not be approved unless the authority has signed the certificate and has assigned to it a disposal shipment certificate number. The disposal shipment certificate number shall be placed on each manifest that is a part of the waste shipment approved on the disposal shipment certificate.

(7) Without requiring submission of a new application for a disposal shipment certificate, upon the written request of a generator, processor, or collector, the authority may issue an amended disposal shipment certificate that is valid for 3 days, within 15 days of the original delivery date designated by the authority.

(8) Upon written prenotification by the authority to a generator, carrier, or processor within 72 hours of the original delivery date designated by the authority, the authority may issue an amended disposal shipment certificate. If the amended date is unacceptable to the generator, processor, or collector, a new application for a disposal shipment certificate shall be submitted.

**History:** Add. 1987, Act 203, Imd. Eff. Dec. 22, 1987.

**Compiler's note:** For transfer of powers and duties of radioactive materials program from department of health and human services to department of health and human services, see E.R.O. No. 2017-3, compiled at MCL 333.26254.

**Popular name:** Act 368

### **333.13722 Manifest; duties of authority accepting waste at disposal site.**

Sec. 13722. (1) The authority or any other person shall not accept delivery of waste unless the waste is accompanied by a manifest certified by each generator, carrier, processor, or collector who possessed the waste and who is authorized to possess waste under this part, and the location of acceptance is the destination indicated on the manifest.

(2) When the authority accepts waste at the disposal site, the authority shall do all of the following:

(a) Keep permanent records as required by the department.

(b) Compile an annual report pertaining to the operation of the disposal site, the volume and type of waste placed in the disposal unit, and any other information required by the department.

(c) Make manifest copies, certificates of disposal, and reports available for review and inspection at reasonable times by the department or a peace officer.

(d) Certify on the manifest receipt of the waste and furnish a copy of the manifest to the generator within 10 days after receipt of the waste.

(e) Within 30 days of receipt of waste, notify the generator whether the manifest was properly completed.

**History:** Add. 1987, Act 203, Imd. Eff. Dec. 22, 1987.

**Compiler's note:** For transfer of powers and duties of radioactive materials program from department of health and human services to department of health and human services, see E.R.O. No. 2017-3, compiled at MCL 333.26254.

**Popular name:** Act 368

### **333.13723 Operation of disposal site; inspection of shipment; refusal to accept waste; return of waste; seizure and impoundment of vehicle and contents; imposition of surcharges; notice; unloading; requirements as to transport vehicle; informing department of violations.**

Sec. 13723. (1) The disposal site shall be operated in accordance with this part, the rules promulgated under this part, and in compliance with the terms and conditions of the construction and operating license and any applicable federal requirements.

(2) Each shipment of waste that arrives at the disposal site shall not proceed into the unloading area until inspected by both the authority and the department and found by the authority and the department to be in

compliance with this part, the rules promulgated under this part, the manifest, and any applicable provisions of the construction and operating license. Shipments that are not in compliance shall proceed to a controlled area for appropriate action to remedy the noncompliance or the authority may refuse to accept the waste. If the authority refuses to accept the waste, the authority may order the waste returned by the carrier to the generator or processor who contracted with the carrier to transport the waste to the disposal site. If the waste is ordered to be returned, the authority shall specify on the manifest the address of the generator or processor to whom the waste shall be returned. The authority may seize and impound a vehicle and the contents of that vehicle if it transports waste in a manner that is not in compliance with this part or the rules promulgated under this part or if the contents of the truck are not in compliance with this part or the rules promulgated under this part. In addition, the authority may impose surcharges as provided in the low-level radioactive waste authority act. A vehicle and its contents that are impounded as provided in this subsection shall not be released until the department informs the authority that appropriate remedial and enforcement action has been concluded. The authority or his or her authorized agent shall notify the department and the local monitoring committee of the host site community of the noncomplying shipment. Shipments that are found to be in compliance shall proceed to the unloading area. After a transport vehicle is unloaded, or leaves the unloading area without being unloaded, it shall not leave the disposal site until it is inspected by the authorized agent of the authority and the department and is decontaminated, if necessary.

(3) The authority shall promptly inform the department of any violation of this part, the rules promulgated under this part, a permit issued under this part, or the low-level radioactive waste authority act, that is committed or that the authority suspects was committed by a generator, collector, carrier, or processor.

**History:** Add. 1987, Act 203, Imd. Eff. Dec. 22, 1987.

**Compiler's note:** For transfer of powers and duties of radioactive materials program from department of health and human services to department of health and human services, see E.R.O. No. 2017-3, compiled at MCL 333.26254.

**Popular name:** Act 368

**333.13724 Compact member states; list of generators, carriers, processors, and collectors; state laws and rules; valid permits; permitting and regulatory system; permission to receive waste; equivalent privileges; expenses; liabilities; primary place of business; eligibility for permit.**

Sec. 13724. (1) If this state is a member of a compact, the department shall obtain from each compact member a list of generators, carriers, processors, and collectors who hold permits to generate, transport, process, or collect waste in each compact member state. The department shall also obtain an updated list of the generators, carriers, processors, and collectors as necessary. In addition, the department shall obtain from each state that is a member of a compact with this state the state laws and rules that regulate generators, carriers, processors, and collectors in each compact member state.

(2) The department shall compile and maintain a list of all generators, carriers, processors, and collectors who hold valid permits issued in this state under this part, including updated information regarding any change in the status of a permit issued in this state under this part.

(3) If this state is a member of a compact, the department shall determine which compact member states have established and maintained to the satisfaction of the department a permitting and regulatory system, including penalties and remedies, that equals or exceeds the laws and rules of this state as they apply to generators, carriers, processors, and collectors, and the department shall prepare a master list that includes only the names of generators, carriers, processors, and collectors who hold permits in those compact member states and the names of generators, carriers, processors, and collectors who hold permits under this part.

(4) The department shall permit the authority to receive waste only from a generator, carrier, processor, or collector whose name is on the master list and who holds a valid permit issued in this state under this part or who holds a valid permit issued by a compact member state that has equivalent privileges in this state because the state in which that person generates, carries, processes, or collects waste has established and maintains to the satisfaction of the department a permitting and regulatory system, including penalties and remedies, that equals or exceeds the laws and rules of this state as they pertain to generators, carriers, processors, and collectors. If this state is a member of a compact, a compact member state that establishes and maintains a permitting and regulatory system that the department determines equals or exceeds this state's system as provided in subsection (3) shall, by accepting equivalent privileges in this state as provided in this subsection, give its consent to the requirements of this part, the rules promulgated under this part, and the provisions of the low-level radioactive waste authority act. In addition, each of the compact member states shall be considered to have consented to share with this state and any other compact member states the expenses incurred in the construction, operation, site closure and stabilization, postclosure observation and maintenance, and institutional control of the disposal site and liabilities incurred as a result of the locating of

the disposal site in this state.

(5) A carrier, processor, or collector whose primary place of business is in this state shall be eligible to seek a permit from the department under this part to transport, process, or collect waste in this state. A carrier, processor, or collector whose primary place of business is in a state that is not a compact member state shall be eligible to seek a permit from the department under this part to transport, process, or collect waste generated in this state. The department shall issue a permit only to a generator who generates waste in this state.

**History:** Add. 1987, Act 203, Imd. Eff. Dec. 22, 1987;—Am. 1994, Act 435, Imd. Eff. Jan. 6, 1995.

**Compiler's note:** For transfer of powers and duties of radioactive materials program from department of health and human services to department of health and human services, see E.R.O. No. 2017-3, compiled at MCL 333.26254.

**Popular name:** Act 368

### **333.13725 Generator's permit; identification number; requirements; conditions; validity; issuance or renewal; application; nontransferable; applicability; fee; modification of permit; administrative costs; automatic issuance of permit.**

Sec. 13725. (1) After the issuance of a construction and operating license for a disposal site under this part, a person shall not generate waste in this state unless the person holds a generator's permit issued under this section. The department shall assign an identification number to each generator who is issued a permit or who has been granted equivalent privileges in this state under section 13724.

(2) A generator's permit shall include requirements as provided in this part and any rules promulgated under this part, in the low-level radioactive waste authority act, and conditions that are equivalent to applicable federal requirements. Other conditions as necessary and provided by law may be imposed after the department has submitted to the governor and the legislature the written recommendations required under section 13707(2). A generator's permit is valid for 3 years after the date of issuance.

(3) Upon receipt of the application and a fee as required in subsection (6), the department shall issue or renew a generator's permit if it determines that the generator meets the requirements of this part.

(4) An application for a generator's permit shall contain information required by the department to implement and enforce this part, including all of the following:

- (a) The estimated quantities and types of waste generated.
- (b) The procedures and methods to be used for responding to a release of waste.
- (c) The location and use of storage and transfer facilities, if any.

(5) A generator's permit is not transferable, and shall state with particularity the persons and real or personal property to which it applies.

(6) Each person who submits an application for a generator's permit or permit renewal in this state under this section shall pay a permit application fee of \$500.00.

(7) If a generator requests modification of a generator's permit, or if the director determines that modifications are necessary to conform to the requirements of this part, the director may invoke permit modifications which the director considers necessary and may specify the time required to complete the modifications. The director may prescribe a fee not to exceed \$500.00 for administrative costs associated with the processing of a modification of a generator permit.

(8) The department shall automatically issue a generator's permit to an applicant who makes an initial application for a generator's permit under this part if that person holds a valid permit or other authorization to generate waste issued by the nuclear regulatory commission at the time of the initial application. A person granted a generator's permit under this subsection is subject to all the applicable provisions of this part, rules promulgated under this part, and the provisions of the permit.

**History:** Add. 1987, Act 203, Imd. Eff. Dec. 22, 1987;—Am. 1994, Act 435, Imd. Eff. Jan. 6, 1995.

**Compiler's note:** For transfer of powers and duties of radioactive materials program from department of health and human services to department of health and human services, see E.R.O. No. 2017-3, compiled at MCL 333.26254.

**Popular name:** Act 368

### **333.13726 Duties of generator; generator acting as carrier, collector, or processor.**

Sec. 13726. (1) A generator required to be permitted under this part or who has privileges in this state pursuant to section 13724 shall do all of the following:

- (a) Prepare a manifest for each shipment of waste.
- (b) Provide a separate manifest for each unit of waste as determined by the department that is to be transported to or collected or processed on property other than the property to which the generator's permit applies.

(c) Include with each manifest details as specified by the department, including sufficient qualitative and

quantitative analysis and physical description of the waste to permit an evaluation of the potential hazards associated with the waste and to determine proper methods of transportation, processing, collecting, storage, and disposal. The manifest shall also indicate any safety or transportation requirements required by law for each shipment of waste.

(d) Within 10 days after the transfer of the waste to a carrier, processor, or collector, or to the disposal site, submit a copy of the manifest to the authority.

(e) Compile and maintain information and records regarding the quantities and the disposition of waste shipped.

(f) Package waste in accordance with applicable federal requirements, this part, rules promulgated under this part, and any requirements under the low-level radioactive waste authority act.

(g) Label each container of waste with the generator's identification number and an identification number that corresponds to the number listed on the manifest for that waste and comply with all lawful requirements for labeling and containerization of waste for shipment.

(h) Keep all records and copies of manifests available for review and inspection at reasonable times by the department or a peace officer.

(i) Retain all records and manifest copies for 3 years. The retention period required by this subdivision shall be automatically extended during the course of an unresolved enforcement action regarding a regulated activity or as required by the director.

(j) Certify that the information contained in each manifest is accurate.

(k) Provide for the transport, collection, or processing of waste only by persons holding a carrier's, collector's, or processor's permit issued under this part or who has equivalent privileges in this state under section 13724.

(2) Without obtaining an additional permit under this part, a person who holds a generator's permit issued in this state may act as a carrier, collector, or processor in regard to waste that is generated by the holder under the generator's permit. A generator who acts as a carrier, collector, or processor pursuant to this subsection shall be subject to the same requirements provided for in this part for a carrier, collector, or a processor.

**History:** Add. 1987, Act 203, Imd. Eff. Dec. 22, 1987.

**Compiler's note:** For transfer of powers and duties of radioactive materials program from department of health and human services to department of health and human services, see E.R.O. No. 2017-3, compiled at MCL 333.26254.

**Popular name:** Act 368

**333.13727 Carrier's permit; identification number; requirements; conditions; validity; issuance or renewal; application; registration and inspection of vehicle; inspection fee; vehicle tag; permit nontransferable; applicability; application fee; modification of permit; administrative costs; specifying available routes.**

Sec. 13727. (1) Except as otherwise provided in section 13726(2), a person shall not transport waste in this state after the issuance of a construction and operating license for a disposal site under this part unless the person holds a carrier's permit issued under this section or issued by a state that has been granted equivalent privileges in this state under section 13724. The department shall assign an identification number to each carrier who is issued a permit or who has equivalent privileges in this state under section 13724.

(2) A carrier's permit shall include requirements as provided in this part and in any rules promulgated under this part, in the low-level radioactive waste authority act, and conditions that are equivalent to applicable federal requirements. Other conditions as necessary and provided by law may be imposed after the department has submitted to the governor and the legislature the written recommendations required under section 13707(2). A carrier's permit is valid for 3 years after the date of issuance.

(3) Upon receipt of the application and fee required in subsection (7), the department shall issue or renew a carrier's permit if it determines that the carrier meets the requirements of this part.

(4) An application for a carrier's permit shall contain information required by the department to implement and enforce this part, including all of the following information:

(a) The estimated quantities and types of wastes to be transported.

(b) The procedures and methods to be used for responding to a release of waste.

(c) The location and use of storage and transfer facilities, if any.

(5) As a condition of a carrier's permit from this state, each vehicle used by a carrier to transport waste shall be registered and inspected by the department of state police annually to insure compliance with applicable state and federal law. The department of state police may collect a fee of \$200.00 for each vehicle that is inspected. The department of state police shall supply the carrier with a vehicle tag for each vehicle registered under this subsection. The vehicle tag shall be displayed by the carrier on each registered vehicle.

(6) A carrier's permit is not transferable, and shall state with particularity the persons and real or personal property to which it applies.

(7) Each person who submits an application for a carrier's permit or permit renewal in this state under this section shall pay a permit application fee of \$500.00.

(8) If a carrier requests modification of a carrier's permit, or if the director determines that modifications are necessary to conform to the requirements of this part, the director may invoke permit modifications which the director considers necessary and may specify the time required to complete the modifications. The director may prescribe a fee not to exceed \$500.00 for administrative costs associated with the processing of a modification to a carrier permit.

(9) The department with the assistance of the department of state police and the state transportation department shall specify the routes available in this state for the transportation of waste.

**History:** Add. 1987, Act 203, Imd. Eff. Dec. 22, 1987;—Am. 1994, Act 435, Imd. Eff. Jan. 6, 1995.

**Compiler's note:** For transfer of powers and duties of radioactive materials program from department of health and human services to department of health and human services, see E.R.O. No. 2017-3, compiled at MCL 333.26254.

**Popular name:** Act 368

### **333.13728 Manifest as condition to transporting of waste by carrier; certification; contents; delivery; retaining copy of manifest; forwarding copy of manifest.**

Sec. 13728. (1) A carrier shall not transport waste unless each shipment of waste is accompanied by a manifest.

(2) A carrier shall certify on the manifest the receipt of waste for transportation, and shall specify on the manifest the number of containers of waste received and actually delivered and the corresponding identification numbers for each container of waste, and the carrier's identification number. The carrier shall deliver the waste and the manifest only to the destination specified on the manifest.

(3) A carrier shall retain a copy of each manifest for 3 years. The retention period required by this subsection shall be automatically extended during the course of an unresolved enforcement action regarding a regulated activity or as required by the director. The carrier shall forward a copy of the manifest to the authority within 10 days of its delivery to a processor, collector, or to the disposal site.

**History:** Add. 1987, Act 203, Imd. Eff. Dec. 22, 1987.

**Compiler's note:** For transfer of powers and duties of radioactive materials program from department of health and human services to department of health and human services, see E.R.O. No. 2017-3, compiled at MCL 333.26254.

**Popular name:** Act 368

### **333.13729 Collector's permit; identification number; requirements; conditions; validity; issuance or renewal; application; nontransferable; applicability; fee; modification of permit; administrative costs.**

Sec. 13729. (1) Except as otherwise provided in section 13726(2), a person shall not collect waste for disposal in this state after the issuance of a construction and operating license for a disposal site under this part unless the person holds a collector's permit issued under this section or issued by a state that has been granted equivalent privileges in this state under section 13724. The department shall assign an identification number to each collector who is issued a permit or who has equivalent privileges in this state pursuant to section 13724.

(2) A collector's permit shall include requirements as provided in this part and any rules promulgated under this part, in the low-level radioactive waste authority act, and conditions that are equivalent to applicable federal requirements. Other conditions as necessary and provided by law may be imposed after the department has submitted to the governor and the legislature the written recommendations required under section 13707(2). A collector's permit is valid for 3 years after the date of issuance.

(3) Upon receipt of the application and fee required in subsection (6), the department shall issue or renew a collector's permit if it determines that the collector meets the requirements of this part.

(4) An application for a collector's permit shall contain information required by the department to implement and enforce this part, including all of the following information:

- (a) The estimated quantities and types of wastes to be collected.
- (b) The procedures and methods to be used for responding to the release of waste.
- (c) The location and use of storage and transfer facilities, if any.

(5) A collector's permit is not transferable, and shall state with particularity the persons and real or personal property to which it applies.

(6) Each person who submits an application for a permit or permit renewal in this state under this section shall pay a permit application fee of \$500.00.



(7) If a collector requests modification of a collector's permit or if the director determines that modifications are necessary to conform to the requirements of this part, the director may invoke permit modifications which the director considers necessary and may specify the time required to complete the modifications. The director may prescribe a fee not to exceed \$500.00 for administrative costs associated with the processing of a modification to a collector permit.

**History:** Add. 1987, Act 203, Imd. Eff. Dec. 22, 1987;—Am. 1994, Act 435, Imd. Eff. Jan. 6, 1995.

**Compiler's note:** For transfer of powers and duties of radioactive materials program from department of health and human services to department of health and human services, see E.R.O. No. 2017-3, compiled at MCL 333.26254.

**Popular name:** Act 368

### **333.13730 Manifest as condition to collector accepting delivery of waste; certification; contents; transfer; retaining copy of manifest; forwarding copy of manifest.**

Sec. 13730. (1) A collector shall not accept the delivery of waste unless the waste is accompanied by a manifest.

(2) A collector shall certify on the manifest the receipt of waste and shall specify on the manifest the number of containers of waste received and actually delivered and the corresponding identification numbers for each container of waste, and the collector's identification number. The collector shall transfer the manifest with the waste to a carrier for transportation.

(3) The collector shall retain a copy of each manifest for 3 years. The retention period required by this subsection shall be automatically extended during the course of an unresolved enforcement action regarding the regulated activity or as required by the director.

(4) The collector shall forward a copy of the manifest to the authority within 10 days of transferring the waste to a carrier for transportation.

**History:** Add. 1987, Act 203, Imd. Eff. Dec. 22, 1987.

**Compiler's note:** For transfer of powers and duties of radioactive materials program from department of health and human services to department of health and human services, see E.R.O. No. 2017-3, compiled at MCL 333.26254.

**Popular name:** Act 368

### **333.13731 Processor's permit; identification number; requirements; conditions; validity; issuance or renewal; application; nontransferable; applicability; fee; modification of permit; administrative costs.**

Sec. 13731. (1) Except as otherwise provided in section 13726(2), a person shall not process waste in this state after the issuance of a construction and operating license for a disposal site under this part unless the person holds a processor's permit issued under this section or issued in a state that has been granted equivalent privileges in this state under section 13724. The department shall assign an identification number to each processor who is issued a permit or who has equivalent privileges in this state pursuant to section 13724.

(2) A processor's permit shall include requirements as provided in this part, and in any rules promulgated under this part, in the low-level radioactive waste authority act, and conditions that are equivalent to applicable federal requirements. Other conditions as necessary and provided by law may be imposed after the department has submitted to the governor and the legislature the written recommendations required under section 13707(2). A processor's permit is valid for 3 years after the date of issuance.

(3) Upon receipt of the application and fee in subsection (6), the department shall issue or renew a processor's permit if it determines that the processor meets the requirements of this part.

(4) An application for a processor's permit shall contain information required by the department to implement and enforce this part, including all of the following information:

(a) The estimated quantities and types of waste to be processed.

(b) The procedures and methods to be used for responding to the release of waste, including an analysis of the potential pathways for a release of waste to the environment and the potential impact of such a release.

(c) The location and use of storage and transfer facilities, if any.

(5) A processor's permit shall not be transferable, and shall state with particularity the persons and real or personal property to which it applies.

(6) Each person who submits an application for a processor's permit or permit renewal under this section shall pay a permit application fee of \$500.00.

(7) If a processor requests modification of a processor's permit, or if the director determines that modifications are necessary to conform to the requirements of this part, the director may invoke permit modifications which the director considers necessary and may specify the time required to complete the modifications. The director may prescribe a fee not to exceed \$500.00 for administrative costs associated with the processing of a modification to a processor permit.

**History:** Add. 1987, Act 203, Imd. Eff. Dec. 22, 1987;—Am. 1994, Act 435, Imd. Eff. Jan. 6, 1995.

**Compiler's note:** For transfer of powers and duties of radioactive materials program from department of health and human services to department of health and human services, see E.R.O. No. 2017-3, compiled at MCL 333.26254.

**Popular name:** Act 368

**333.13732 Manifest as condition to processor accepting delivery of waste; certification; contents; transportation of waste; forwarding copy of certified manifest to generator; retaining copy of manifest; preparation of manifest; compliance; records; packaging waste; labeling containers.**

Sec. 13732. (1) A processor shall not accept the delivery of waste unless the waste is accompanied by a manifest.

(2) A processor shall certify on the manifest the receipt of waste, the amount, and the type of waste received for processing, and shall include on the manifest the processor's identification number. A processor shall provide for the transportation of waste only by a person holding a carrier's permit authorized under this part.

(3) A processor shall forward a copy of the certified manifest to the generator within 10 days of receiving the waste. The processor shall retain a copy of each manifest for a period of 3 years. The retention period required by this subsection shall be automatically extended during the course of an unresolved enforcement action regarding the regulated activity or as required by the director.

(4) A processor shall prepare a manifest for each shipment of waste it transfers to a person holding a carrier's permit issued under this part. A processor shall comply with the requirements of section 13726(c) to (k).

(5) A processor shall maintain any records necessary to trace a generator's shipment from the point of receipt by the processor to the point of transfer to a carrier.

(6) A processor shall package waste in accordance with applicable federal requirements, this part, and any requirements under the low-level radioactive waste authority act.

(7) If a processor places waste in a different container than the container in which the generator places that waste, the processor shall label each new container of waste with the generator's identification number, an identification number that corresponds to the number listed on the manifest by the generator for that waste, the processor's identification number, and the identification number listed on the manifest by the processor for that repackaged waste.

**History:** Add. 1987, Act 203, Imd. Eff. Dec. 22, 1987.

**Compiler's note:** For transfer of powers and duties of radioactive materials program from department of health and human services to department of health and human services, see E.R.O. No. 2017-3, compiled at MCL 333.26254.

**Popular name:** Act 368

**333.13733 Condition to possession of waste; data as public information.**

Sec. 13733. (1) A person shall not possess waste in this state without complying with the manifest requirements of this part.

(2) Data obtained from any person on a manifest required under this part is public information.

**History:** Add. 1987, Act 203, Imd. Eff. Dec. 22, 1987.

**Compiler's note:** For transfer of powers and duties of radioactive materials program from department of health and human services to department of health and human services, see E.R.O. No. 2017-3, compiled at MCL 333.26254.

**Popular name:** Act 368

**333.13734 Implied consent; due process rights; surety bond, secured trust fund, or other secured instrument or mechanism; reimbursement of costs resulting from violation; conduct constituting violation.**

Sec. 13734. (1) A generator, carrier, processor, and a collector who holds a permit issued under this part or who holds a permit in a state that has been granted equivalent privileges in this state under section 13724 shall by utilizing the disposal site in this state be considered to have given implied consent to the duties and responsibilities imposed on that person under this part, rules promulgated under this part, and the low-level radioactive waste management act.

(2) Nothing in subsection (1) shall be construed to impact upon the due process rights, including any appellate rights, of a generator, carrier, processor, or a collector who gives implied consent as provided in subsection (1).

(3) A generator, carrier, processor, and collector who holds a permit issued under this part shall post a surety bond or present evidence of a secured trust fund or other suitable secured instrument or mechanism in

an amount determined by the department. The bond, trust fund, or other instrument or mechanism shall be payable to the department and conditioned upon performance in accordance with the terms and conditions of the permit of the generator, carrier, collector, or processor. The bond, trust fund, or other instrument or mechanism shall provide that if the generator, carrier, processor, or collector violates the provisions of this part, any rules promulgated under this part, or any terms or conditions of a permit issued under this part, the department shall be reimbursed for the costs that are incurred as a result of the violation. The failure to maintain a surety bond, secured trust fund, or other suitable instrument or mechanism constitutes a violation of this part.

**History:** Add. 1987, Act 203, Imd. Eff. Dec. 22, 1987.

**Compiler's note:** For transfer of powers and duties of radioactive materials program from department of health and human services to department of health and human services, see E.R.O. No. 2017-3, compiled at MCL 333.26254.

**Popular name:** Act 368

### **333.13735 Notice of release of waste; report.**

Sec. 13735. A generator, carrier, processor, and collector shall be responsible for giving immediate oral notice to the department, the law enforcement agency and governing body of the municipality and county in which a release occurs, the local monitoring committee of the host site community, and the authority regarding any known release of waste in this state. Within 10 days after the release, a written report shall be submitted by the generator, carrier, processor, or collector to the department, the local monitoring committee, and the authority, which shall include all of the following information:

- (a) The date, time, and location of the release.
- (b) The cause, nature, and details of the release.
- (c) The remedial actions, if any, taken to effectuate corrective measures and to mitigate the impact of the release.
- (d) The measures to be taken to prevent the occurrence of future releases.
- (e) Other information as may be required by the department.

**History:** Add. 1987, Act 203, Imd. Eff. Dec. 22, 1987.

**Compiler's note:** For transfer of powers and duties of radioactive materials program from department of health and human services to department of health and human services, see E.R.O. No. 2017-3, compiled at MCL 333.26254.

**Popular name:** Act 368

### **333.13736 Sanctions for negligence or failure to exercise due care; grounds for suspending, revoking, annulling, withdrawing, recalling, or cancelling license or permit; order; procedures, hearings, oaths, subpoenas, and testimony; books, papers, or documents; aid of circuit court; grounds for denial of application for license or permit; monitoring, surveillance, and inspection; spot checks; advising authority of regulatory actions; administrative inspection warrant; search warrant; probable cause.**

Sec. 13736. (1) A person who holds a license or permit issued under this part may be subject to sanctions as provided in subsection (2) for negligence or a failure to exercise due care, including negligent supervision, regarding the license or permit holder's contractors, employees, agents, or subordinates.

(2) The department may suspend, revoke, annul, withdraw, recall, or cancel a license or permit issued under this part in accordance with the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws, if any of the following exists:

- (a) Fraud or deceit in obtaining a permit or license or in registering under this part.
- (b) A violation of this part, an order issued or a rule promulgated under this part, or the conditions of a registration, permit, or license under this part.

(c) Negligence or failure to exercise due care, including negligent supervision, regarding contractors, employees, agents, or subordinates.

(3) In addition to or in lieu of any action authorized in subsection (2), if the department finds any of the circumstances listed in subsection (2)(a) to (c), the department may issue an order directing the person to do either of the following:

- (a) Discontinue handling or otherwise possessing waste.
- (b) Comply with specific requirements of a permit or license issued under this part.

(4) The department may establish procedures, hold hearings, administer oaths, issue subpoenas, and order testimony to be taken at a hearing or by deposition in a proceeding under this part. A person may be compelled to appear and testify and to produce books, papers, or documents in a proceeding. In case of disobedience of a subpoena, a party to a hearing may invoke the aid of the circuit court of the county in which the hearing is held to require the attendance and testimony of witnesses. The circuit court may issue an order

requiring an individual to appear and give testimony.

(5) An application for a license or permit under this part may be denied on a finding of any condition or practice that would constitute a violation of this part or any rules promulgated under this part if the applicant were a holder of the permit or a license that the applicant seeks or if there is fraud or deceit in attempting to obtain a permit or license under this part.

(6) The director or his or her authorized representatives may enter the disposal site or other location where waste is located or reasonably believed to be located at any time for the purpose of monitoring, surveillance, and inspection, and may enter at all reasonable times upon any public or private property, building, premises, place, or vehicle for the purpose of determining compliance with this part, or a permit, registration, or license condition, rule, or an order issued pursuant to this part. In the conduct of an investigation, the director or his or her authorized representatives may collect samples, conduct tests and inspections, and examine any book, record, paper, document, or other physical evidence related to the generation, management, processing, collecting, transport, storage, or disposal of waste.

(7) The department shall conduct unannounced spot checks of the premises of generators and processors who hold permits issued under this part to assure the proper packaging of waste. The unannounced spot checks provided for in this subsection shall only occur to the extent that the department has access to the premises of the generator and processor under federal law.

(8) The department shall advise the authority of regulatory actions taken under this part and shall evaluate and respond within 30 days to information received from the authority in which the authority recommends that regulatory action should be undertaken by the department.

(9) An agent or employee of the department may apply for an administrative inspection warrant pursuant to sections 2241 to 2247, or for a search warrant for purposes of collecting samples, testing, inspecting, or examining any radioactive material or any public or private property, building, premises, place, vehicle, book, record, paper, sample results, or other physical evidence related to the generation, processing, collecting, management, transport, storage, disposal, or possession of waste. It shall be sufficient probable cause to show any of the following:

(a) The sample collection, test, inspection, or examination is pursuant to a general administrative action to determine compliance with this part.

(b) An agent or employee of the department has reason to believe that a violation of this part has occurred or may occur.

(c) An agent or employee of the department has been refused access to the waste, property, building, premise, place, vehicle, book, record, document, paper, sample results, or other physical evidence related to the generation, management, processing, collecting, transport, or disposal of waste, or has been prevented from collecting samples or conducting tests, surveillance, inspections, monitoring, or examinations.

**History:** Add. 1987, Act 203, Imd. Eff. Dec. 22, 1987.

**Compiler's note:** For transfer of powers and duties of radioactive materials program from department of health and human services to department of health and human services, see E.R.O. No. 2017-3, compiled at MCL 333.26254.

**Popular name:** Act 368

### **333.13737 Action to restrain, enjoin, prevent, or correct violation; rules adopting schedule of monetary civil fines.**

Sec. 13737. (1) Notwithstanding the existence and pursuit of any other remedy, the director, without posting a bond, may request the attorney general to bring an action in the name of the people of this state to restrain, enjoin, prevent, or correct a violation of this part, rules promulgated under this part, or a permit or license or order issued under this part.

(2) The department may promulgate rules to adopt a schedule of monetary civil fines in accordance with sections 2262 and 2263 to enforce this part.

**History:** Add. 1987, Act 203, Imd. Eff. Dec. 22, 1987.

**Compiler's note:** For transfer of powers and duties of radioactive materials program from department of health and human services to department of health and human services, see E.R.O. No. 2017-3, compiled at MCL 333.26254.

**Popular name:** Act 368

### **333.13738 Order requiring compliance or remedial action; emergency order; civil action; venue; civil fine; violation as misdemeanor or felony; penalty; "state of mind"; "placing person in imminent danger of death or serious bodily injury"; affirmative defense; "serious bodily injury"; action for damage; costs of litigation; intervention.**

Sec. 13738. (1) If the director finds that a person is in violation of this part, a rule promulgated under this part, or a permit or license issued under this part, the director may issue an order requiring the person to

comply with this part, rule, permit, or license. An order issued pursuant to this section may require remedial actions considered necessary by the department to correct violations. An order issued by the director pursuant to this section may be an emergency order as authorized by section 2251 upon a finding and determination that an imminent danger to the health or lives of individuals exists as a result of conditions associated with the generation, processing, collecting, management, transporting, handling, disposal, or possession of waste. The attorney general may commence a civil action against a person for appropriate relief, including injunctive relief for a violation of this part or a rule promulgated under this part. An action under this subsection may be brought in the circuit court for the county of Ingham or for the county in which the defendant is located, resides, or is doing business. In addition to any other relief granted under this subsection, the court may impose a civil fine of not more than \$25,000.00 for each instance of violation and, if the violation is continuous, for each day of continued noncompliance. A fine collected under this subsection shall be forwarded to the state treasurer for deposit in the general fund.

(2) A person who possesses, generates, processes, collects, transports, or disposes of waste in violation of this part, or contrary to a license, permit, order, or rule issued or promulgated under this part, or who makes a false statement, representation, or certification in an application for, or form pertaining to, a permit or license, is guilty of a misdemeanor, punishable by a fine of not more than \$25,000.00 for each instance of violation and, if the violation is continuous, for each day of violation, or imprisonment for not more than 1 year, or both. If the conviction is for a violation committed after a first conviction of the person under this subsection, the person is guilty of a misdemeanor, punishable by a fine of not more than \$50,000.00 for each instance of violation and, if the violation is continuous, for each day of violation, or by imprisonment for not more than 5 years, or both.

(3) Any person who knowingly possesses, generates, processes, collects, transports, or disposes of waste in violation of subsection (2) and who knows at that time that he or she thereby places another person in imminent danger of death or serious bodily injury, and if his or her conduct in the circumstances manifests an unjustified and inexcusable disregard for human life, or if his or her conduct in the circumstances manifests an extreme indifference for human life, is guilty of a misdemeanor, punishable by a fine of not more than \$250,000.00 or imprisonment for not more than 2 years, or both, except that any person whose actions constitute an extreme indifference for human life is guilty of a felony punishable by a fine of not less than \$250,000.00 and not more than \$500,000.00 and imprisonment for not less than 5 years and not more than 20 years. A defendant that is not an individual and not a governmental entity shall be subject, upon conviction, to a fine of not more than \$1,000,000.00.

(4) For the purposes of subsection (3), a person's state of mind is knowing with respect to:

(a) His or her conduct, if he or she is aware of the nature of his or her conduct.

(b) An existing circumstance, if he or she is aware or believes that the circumstance exists.

(c) A result of his or her conduct, if he or she is aware or believes that his or her conduct is substantially certain to cause danger of death or serious bodily injury.

(5) For purposes of subsection (3), in determining whether a defendant who is an individual knew that his or her conduct placed another person in imminent danger of death or serious bodily injury, both of the following apply:

(a) The person is responsible only for actual awareness or actual belief that he or she possessed.

(b) Knowledge possessed by a person other than the defendant but not by the defendant himself or herself may not be attributed to the defendant. However, in proving the defendant's possession of actual knowledge, circumstantial evidence may be used, including evidence that the defendant took affirmative steps to shield himself or herself from relevant information.

(6) It is an affirmative defense to a prosecution under this part that the conduct charged was consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of either of the following:

(a) An occupation, business, profession, or through the undertaking of an inspection of the disposal site as a representative of the local monitoring committee of the host site community.

(b) Medical treatment or professionally approved methods and such other person had been made aware of the risks involved prior to giving consent.

(7) The defendant may establish an affirmative defense under subsection (6) by a preponderance of the evidence.

(8) For purposes of subsection (3), "serious bodily injury" means each of the following:

(a) Bodily injury which involves a substantial risk of death.

(b) Unconsciousness.

(c) Extreme physical pain.

(d) Protracted and obvious disfigurement.

(e) Protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

(9) In addition to a fine, the attorney general may bring an action in a court of competent jurisdiction to recover the full value of the damage done to the natural resources of this state and the costs of surveillance and enforcement by the state resulting from the violation. The damages and cost collected under this subsection shall be forwarded to the state treasurer for deposit in the general fund.

(10) The court, in issuing a final order in an action brought under this part, may award costs of litigation, including reasonable attorney and expert witness fees to a party, including the state, if the court determines that the award is appropriate.

(11) A person who has an interest which is or may be affected by a civil or administrative action commenced under this part shall have a right to intervene in that action.

**History:** Add. 1987, Act 203, Imd. Eff. Dec. 22, 1987.

**Compiler's note:** For transfer of powers and duties of radioactive materials program from department of health and human services to department of health and human services, see E.R.O. No. 2017-3, compiled at MCL 333.26254.

**Popular name:** Act 368

### **333.13739 Action for injunction; noncompliance by department.**

Sec. 13739. (1) A person may bring an action for an injunction against the director to compel the director to fulfill a requirement of this part.

(2) The failure of the department to comply with a requirement of this part that pertains to specified dates by which certain acts are to occur shall not invalidate an action taken by the department after the specified date if that action is otherwise in compliance with this part.

**History:** Add. 1987, Act 203, Imd. Eff. Dec. 22, 1987.

**Compiler's note:** For transfer of powers and duties of radioactive materials program from department of health and human services to department of health and human services, see E.R.O. No. 2017-3, compiled at MCL 333.26254.

**Popular name:** Act 368

### **333.13740 Disposition of receipts from civil fines and fees; appropriations; construction of section; expenditures required as result of release.**

Sec. 13740. (1) The department shall deposit all receipts from civil fines and fees collected pursuant to this part and from judgments, settlements, and any other payments collected pursuant to this part in the state treasury to the credit of the general fund.

(2) Funds credited to the general fund as required by this section shall be appropriated for the purposes provided in this section and if insufficient funds are available or appropriated from the general fund, the department may seek appropriations by the legislature from the low-level radioactive waste management fund for purposes authorized by this part, including, but not limited to, any of the following:

(a) Hiring personnel and any other operating and contingent expenses necessary for the proper administration of this part, to fulfill the state's obligations under the low-level radioactive waste policy act, Public Law 96-573, 42 U.S.C. 2021b to 2021d, and if this state is a member of a compact to assure adequate involvement by this state in any compact activities and responsibilities.

(b) Regulatory costs, including, but not limited to, the costs of promulgating and enforcing administrative rules if this state enters into an agreement with the United States nuclear regulatory commission as provided in section 13707.

(c) Contracting with any person or vendor for the purpose of carrying out this part and the rules promulgated under this part.

(d) Taking any actions necessary to protect the public health, safety, and welfare, and the environment from actual or threatened harm from activities regulated under this part.

(3) This section shall not be construed to limit the financial responsibilities of a person who holds a permit or license under this part, or establish or imply any liability on the part of the state.

(4) If expenditures are required as a result of a release or threatened release, the department, the attorney general on behalf of the department, the department of natural resources, and the authority shall seek to obtain funds from a responsible party including a surety bond, secured trust fund, or other instrument, mechanism, fund, or liability insurance held by that party.

**History:** Add. 1987, Act 203, Imd. Eff. Dec. 22, 1987;—Am. 1994, Act 435, Imd. Eff. Jan. 6, 1995.

**Compiler's note:** For transfer of powers and duties of radioactive materials program from department of health and human services to department of health and human services, see E.R.O. No. 2017-3, compiled at MCL 333.26254.

**Popular name:** Act 368

### **333.13741 Lawful activity not prohibited or restricted.**

Sec. 13741. A municipality or county shall not prohibit or restrict a lawful activity regulated under this part.

**History:** Add. 1987, Act 203, Imd. Eff. Dec. 22, 1987.

**Compiler's note:** For transfer of powers and duties of radioactive materials program from department of health and human services to department of health and human services, see E.R.O. No. 2017-3, compiled at MCL 333.26254.

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